

October 20, 2017

**BY ELECTRONIC FILING**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: NOTICE OF EX PARTE**  
**GN Docket No. 14-177, IB Docket Nos. 15-256 & 97-95, RM-11664,**  
**WT Docket No. 10-112: *Use of Spectrum Bands Above 24 GHz For Mobile Radio***  
***Services, et al.***  
**ULS File Nos. 0007652635 & 0007652637: *AT&T Mobility Spectrum LLC and FiberTower***  
***Corporation Seek FCC Consent to the Transfer of Control of 24 GHz and 39 GHz***  
***Licenses***  
**ULS File No. 0007765708: *Cellco Partnership d/b/a Verizon Wireless and XO Holdings***  
***Seek FCC Consent to the Transfer of Control of Local Multipoint Distribution***  
***Service and 39 GHz Licenses Held by XO Holdings Subsidiary Nextlink Wireless LLC***  
**ULS File No. 0007783428: *Verizon Communications and Straight Path Communications***  
***Seek FCC Consent to the Transfer of Control of Local Multipoint Distribution***  
***Service, 39 GHz, 3650-3700 MHz, and Fixed Point to Point Microwave Licenses***

Dear Ms. Dortch:

On October 18, 2017, Rebecca Murphy Thompson and I of Competitive Carriers Association (“CCA”),<sup>1</sup> and Jennifer Bagg of Harris, Wiltshire & Grannis LLP, met with Rachael Bender, Legal Advisor to Chairman Pai, to discuss the above-referenced proceedings. On October 19, 2017, Jennifer Bagg and I met with Kevin Holmes, Legal Advisor to Commissioner Carr. CCA explained that mmW spectrum is an essential input into current and next-generation wireless networks, and that mobile carriers can deliver the ultrafast mobile broadband speeds, low latencies, and network densification required to provide 5G services only by accessing the large expanses of contiguous spectrum available in the mmW bands. We urged the Federal Communications Commission (“FCC” or “Commission”) to move quickly to adopt policies in the Spectrum Frontiers proceeding to unleash additional mmW spectrum for next-generation technologies, while protecting LMDS incumbent uses by rural carriers, and deny pending transactions initiated by AT&T and Verizon that threaten to prematurely saturate these critical 5G bands.

**Spectrum Frontiers**

Tomorrow’s dynamic and consumer-focused wireless marketplace depends on meaningful and continued access to mmW spectrum today. The technology to provide consumers and businesses with better broadband exists today, but lack of access to spectrum is a significant roadblock. While several

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<sup>1</sup> CCA is the nation’s leading association for competitive wireless providers and stakeholders across the United States. CCA’s membership includes nearly 100 competitive wireless providers ranging from small, rural carriers serving fewer than 5,000 customers to regional and national providers serving millions of customers. CCA also represents associate members including vendors and suppliers that provide products and services throughout the mobile communications supply chain.

rural carriers currently hold LMDS spectrum, unleashing mmW spectrum to all carriers at auction will provide the industry with a meaningful opportunity to develop a dynamic and competitive marketplace today and for next-generation 5G services. In addition, auctioning the mmW spectrum will enable the immediate deployment of advanced wireless services—unlocking carrier investment and innovation.

Consistent with its Petition for Reconsideration of the Spectrum Frontiers Report & Order,<sup>2</sup> CCA urged the FCC to reconsider several aspects of the order.<sup>3</sup> First, CCA urged the Commission to make more mmW spectrum available to competitive carriers. Second, CCA asked the FCC to allow incumbent LMDS spectrum licenses to retain their original geographic size of Basic Trading Area for 28 GHz licenses and Economic Area for 39 GHz licenses. CCA explained that failing to adopt this change will have a detrimental impact on rural carriers. For instance, one larger licensee will have to comply with more than eight times the current substantial service requirements,<sup>4</sup> and one rural carrier's substantial service requirements will multiple by almost ten if the FCC maintains this decision.<sup>5</sup> CCA questions the rational of a policy that would penalize carriers for complying with the FCC buildout requirements, especially when the current Administration is seeking to provide incentives for deployment in rural areas. Third, CCA encouraged the FCC to adopt an in-band spectrum aggregation limit or at least maintain and enforce the current 1250 MHz limit. Fourth, CCA urged the Commission to decline to impose an interoperability requirement for the 37/39 GHz band. Finally, CCA asked the FCC not to apply a cybersecurity disclosure requirement due to American Procedure Act concerns and because Original Equipment Manufacturers are in a better position to combat risks.

#### Pending mmW Transactions

Additionally, while the Commission finalizes the Spectrum Frontiers item, it must also ensure that the pending mmW transactions—Verizon/Nextlink,<sup>6</sup> AT&T/FiberTower,<sup>7</sup> and Verizon/Straight Path<sup>8</sup>—do not put enormous amounts of 28 and 39 GHz spectrum into the hands of one or two carriers before next generation services and standards are developed. CCA urged the FCC to consider these transactions together to get a true holistic view of the market for mmW spectrum, consistent with the FCC's

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<sup>2</sup> Petition for Reconsideration of CCA, *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services, et al.*, GN Docket No. 14-177, IB Docket Nos. 15-256 & 97-95, RM-11664, WT Docket No. 10-112 (filed Dec. 14, 2016) ("Petition for Reconsideration").

<sup>3</sup> *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd. 8014 (2016) ("Spectrum Frontiers Report & Order").

<sup>4</sup> Letter from Michele C. Farquhar, Counsel to Nextlink Wireless, LLC and XO Communications, LLC, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 14-177, IB Docket Nos. 15-256 & 97-95, RM-11664, WT Docket No. 10-112 (filed July 8, 2016).

<sup>5</sup> *Id.*

<sup>6</sup> *Cellco Partnership d/b/a Verizon Wireless and XO Holdings Seek FCC Consent to the Transfer of Control of Local Multipoint Distribution Service and 39 GHz Licenses Held by XO Holdings Subsidiary Nextlink Wireless LLC*, ULS File No. 0007765708 ("Verizon/Nextlink Transaction").

<sup>7</sup> *AT&T Mobility Spectrum LLC and FiberTower Corporation Seek FCC Consent to the Transfer of Control of 24 GHz and 39 GHz Licenses*, ULS File Nos. 0007652635 & 0007652637 ("AT&T/FiberTower Transaction").

<sup>8</sup> *Verizon Communications and Straight Path Communications Seek FCC Consent to the Transfer of Control of Local Multipoint Distribution Service, 39 GHz, 3650-3700 MHz, and Fixed Point to Point Microwave Licenses*, ULS File No. 0007783428 ("Verizon/Straight Path Transaction").

(Bureau's) order in the Verizon/Nextlink Transaction.<sup>9</sup> CCA also asked the FCC to reject claims that mmW spectrum is not essential to 5G.

CCA reiterated its positions in its Petition to Deny the Verizon/Straight Path application.<sup>10</sup> Specifically, CCA urged the Commission to deny the Verizon/Straight Path application with respect to a substantial portion of the license portfolio and make those licenses available for competitive bidding. Under the transaction, Verizon would acquire 620 MHz of mmW spectrum in the 39 GHz and 28 GHz bands in the top 30 markets, covering a total of 175 billion POPs. CCA explained that allocating spectrum in the 37 GHz band to other providers is not enough to alleviate aggregation concerns. Further, the 37 GHz band must be combined with the 39 GHz band to maximize its use as it is part of the screen and commercial users will need to share it with federal users. Moreover, the proposed transaction would result in Verizon holding almost 46% of all 28 GHz spectrum, which is the most attractive of the mmW bands, including in many of the top 25 markets. Finally, CCA explained that Verizon and Straight Path cannot use the Consent Decree to shield their failure to build out, and encouraged this Commission not to feel constrained by an Enforcement Bureau decision that should have been issued by the Wireless Bureau and, considering the amount of spectrum and money as stake, the full Commission.<sup>11</sup>

CCA also urged the FCC to fulfil its statutory mandate by denying the Verizon/Nextlink transaction, which would concentrate even more 28 GHz and 39 GHz holdings into Verizon's hands.<sup>12</sup> Importantly, if the FCC were to approve both the Nextlink and Straight Path transactions, Verizon would control 54% of all 28 GHz spectrum, 38% of all 39 GHz spectrum, and 45% of all combined 28 and 39 GHz spectrum on a nationwide, MHz-POP basis. For this reason, it is critically important to review these transaction in tandem as the Bureau noted.<sup>13</sup>

CCA reiterated its position in its comments regarding the AT&T/FiberTower application.<sup>14</sup> In the interest of fiscal responsibility and ensuring that next-generation spectrum is put to its highest and best use, CCA urged the Commission to ensure that FiberTower's terminated mmW licenses are made available to all carriers at auction, not just AT&T. In particular, AT&T and FiberTower seek to transfer 738 of FiberTower's 24 GHz and 39 GHz licenses to AT&T. The applicants asked the FCC to grant renewal of 689 of the 738 of FiberTower's licenses that automatically terminated as a result of failure to meet substantial service requirements, and are subject to a pending remand from the U.S. Court of Appeals for

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<sup>9</sup> *Application of Celco Partnership d/b/a Verizon Wireless and XO Holdings For Consent to Transfer of Control of Nextlink Wireless, LLC, et al.*, Memorandum Opinion and Order, 32 FCC Rcd. 5058, 5060 (2017) ("Consolidation Order") ("We find that processing these applications separately using our normal procedures will not limit the ability of CCA or other parties to raise issues concerning either transaction, nor preclude or limit any analysis, action or remedy.").

<sup>10</sup> Petition to Deny the Verizon/Straight Path Application, *Verizon/Straight Path Transaction* (filed Aug. 11, 2017).

<sup>11</sup> *Straight Path Communications, Inc., Ultimate Parent Company of Straight Path Spectrum, LLC*, Order and Consent Decree, 32 FCC Rcd. 284 (2017). The Consent Decree was entered into by the Enforcement Bureau, not the Wireless Bureau, which retains authority over wireless services. The Chairman himself has noted that the Enforcement Bureau should not be entering into sweeping, high-value settlements without full Commission approval.

<sup>12</sup> Petition to Deny the Verizon/Nextlink Application, *Verizon Nextlink Transaction* (filed June 26, 2017).

<sup>13</sup> See Consolidation Order at 5060 ("[o]ur review process generally takes into account, as appropriate, the effects of multiple pending applications . . . ." (quoting *Application of AT&T Inc. and Qualcomm Incorporated for Consent to Assign Licenses and Authorizations*, Order, 26 FCC Rcd. 17589, 17622 ¶ 80 (2011))).

<sup>14</sup> Comments of Competitive Carriers Association, *AT&T/FiberTower Transaction* (filed Mar. 30, 2017).

the District of Columbia Circuit.<sup>15</sup> 650 of the licenses went unconstructed and terminated as a matter of law. CCA does not object to AT&T's acquisition of FiberTower's licenses that were constructed and properly renewed, if so determined on remand. But the FCC should auction the 650 unconstructed licenses for the benefit of all tax-payers and the Treasury, rather than just FiberTower.

CCA explained that excessive aggregation of mmW spectrum at this stage would depress investment and innovation in next-generation wireless service, interfere with critical standards-setting procedures, and hamper competitive carriers' ability to transition to 5G by undermining their access to fixed backhaul. If competitors cannot access this spectrum today, they may not invest in competitive services that consumers expect in the near-term, or develop new services that will benefit the entire wireless industry in the long-term.

To achieve these results, CCA urged the Commission to explore all possible means to accelerate the Spectrum Frontiers auction and resolve the pending mmW transactions in a way that puts more mmW spectrum into the hands of competitive carriers to deploy next generation 5G and wireless services. Moreover, it urged the Commission to require that auctioned mmW spectrum be deployed in accelerated time frames to ensure connectivity is available quickly to providers that need it most. Finally, CCA asked the FCC to enforce existing policies if spectrum holders cannot meet service obligations so that unused spectrum is available on the open market to carriers in a position to deploy services immediately.

CCA looks forward to working with the Commission to find ways to ensure that mmW spectrum is available to all parties to ensure next generation 5G and wireless services are deployed quickly and competitively. This *ex parte* notification is being filed electronically with your office pursuant to Section 1.1206 of the Commission's rules. Please do not hesitate to contact me with any questions or concerns.

Respectfully submitted,

/s/ Courtney Neville

Courtney Neville  
Policy Counsel  
Competitive Carriers Association

cc (via email): Rachael Bender  
Kevin Holmes

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<sup>15</sup> *FiberTower Spectrum Holdings, LLC v. FCC*, 782 F.3d 692 (D.C. Cir. 2015).